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**County of McKinley**

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September 19, 2012

ENTERED  
Office of Proceedings

Mr. Vernon A. Williams, Secretary  
Surface Transportation Board  
395 E Street, S.W.  
Washington, DC 20423-0001

SEP 27 2012

Part of  
Public Record

Re: BNSF Railway Company Abandonment Exemption in McKinley County, New Mexico,  
[STB Docket No. AB 6 (Sub-No. 485X)]

Dear Mr. Williams:

This request is filed on behalf of McKinley County, which is hereinafter referred to as 'proponent'.

While not taking a position on the merits of this abandonment, proponent requests issuance of a Public Use Condition as well as a Certificate or Notice of Interim Trail Use rather than an outright abandonment authorization between milepost 14.50 and milepost 19.61, north of Defiance, in McKinley County, New Mexico.

**A. Public Use Condition**

Proponent requests the Surface Transportation Board (STB) to find that this property is suitable for other public use, specifically trail use, and to place the following conditions on the abandonment:

1. An order prohibiting the carrier from disposing of the corridor, other than the tracks, ties and signal equipment, except of public use on reasonable terms. The justification for this condition is that the rail corridor provides a strategic connection and infrastructure including a bridge over a scenic wash and underpass across State Highway 264, in proximity to connect area residents and users from Navajo Nation population centers and possibly employees at Navajo Nation Division of Transportation headquarters to fitness and recreation opportunities, as well as, future connections to major recreational destinations, such as the High Desert Trail System (2012 designated by the Department of Interior as a "National Recreational Trail"), Gallup Shooting Range, and Mentmore Rock Climbing Area. The corridor would make an excellent multi-use recreational trail and conversion of the property to trail use is in accordance with the County's Comprehensive Plan. In addition, the corridor provides important wildlife habitat and greenspace and its preservation as a recreational trail is consistent with the County's multi-use approach to open space. Finally, the County has a sufficient diabetes and obesity issue and having access to affordable exercise trails and recreational opportunities is an important goal consistent with the Health Element in the County's Comprehensive Plan. The time period sought is 180 days from the effective date of the abandonment authorization. Proponent needs this much time because the notification letter to County did not come to the appropriate County office. Also the County and other affected parties have not had an opportunity to assemble or to review title information, complete a trail plan or commence negotiations with the carrier.

**FILING FEE WAIVER**

2. An order barring removal or destruction of potential trail-related structures such as bridges, trestles, culverts and tunnels. The justification for this condition is that these structures have considerable value for recreational trail purposes. The time period requested is 180 days from the effective date of the abandonment authorization for the same reason as indicated above.

**B. Interim Trail Use**

The railroad right-of-way in this proceeding is suitable for railbanking. In addition to the public use conditions sought above, Proponent also makes the following request:

**STATEMENT OF WILLINGNESS TO ASSUME FINANCIAL RESPONSIBILITY**

In order to establish interim trail use and rail banking under section 8(d) of the National Trails System Act, 16 U.S.C. §1247(d), and 49 C.F.R. §1152.29, McKinley County is willing to assume full responsibility for management of, for any legal liability arising out of the transfer or use of (unless the user is immune from liability, in which case it need only indemnify the railroad against any potential liability), and for the payment of any and all taxes that may be levied or assessed against the right-of-way owned and operated by BNSF Railway Company.

The property and the line extends from railroad milepost 14.50 and milepost 19.61, a distance of 5.11 miles north of Defiance, in McKinley County, New Mexico. The right-of-way is part of a line of railroad proposed for abandonment in STB Docket No. AB 6 (Sub-No. 485X).

A map depicting the right-of-way is attached.

McKinley County acknowledges that use of the right-of-way is subject to the user's continuing to meet its responsibilities described above and subject to possible future reconstruction and reactivation of the right-of-way for rail service.

By my signature below, I certify service upon BNSF Railway Company and 2650 Lou Menk Drive PO Box 96157, Forth Worth, TX 76161-0057], by U.S. Mail, postage prepaid, first class, on September 19, 2012.

Respectfully submitted,

  
David R. Dallago, Chairman  
On behalf of McKinley County